IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 76.

GEORGE P. WETMORE ET AL., PLAINTIFFS IN ERROR,

vs.

DAVID RYMER ET AL., DEFENDANTS IN ERROR.

WRIT OF ERROR.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

This is an action of ejectment brought in the circuit court for the eastern district of Tennessee to recover a large block of land.

The declaration (Transcript, p. 2) alleges that the land is worth more than two thousand dollars.

The real defendant (the others were merely tenants) (Transcript, p. 8) pleaded as to part of the land that he was

not in possession and disclaimed title thereto, and as to the remainder pleaded not guilty and adverse possession for the statutory period. (Transcript, pp. 3 and 4.)

The jury found for the plaintiffs, and judgment was rendered on their verdict that the plaintiffs recover all the lands described in the declaration. (Transcript, pp. 4 and 5.)

After the rendition of the judgment the court took under consideration a motion to dismiss for lack of jurisdiction made during the trial, action upon which had been deferred. (Transcript, pp. 4, 5, 6, 8.)

At the time when the defendant first stated that he intended to seek to take advantage of the alleged defect of jurisdiction the plaintiffs contended that the point could be raised only by plea to the jurisdiction, and had been waived by pleading to the merits and going to trial (Transcript, p. 6). On taking up this motion, after judgment, the court heard arguments thereon and gave the parties until 9 o'clock the next day to file affidavits as to value. At the time named the affidavits were presented. Thereupon the court sustained the defendants' motion to dismiss, set aside the verdict and judgment, and rendered judgment for the defendants on the ground (p. 11) that "upon consideration of the evidence heard on the trial and of the affidavits produced by the plaintiffs' counsel the court was of opinion that the value of the matter in dispute was less than $2,000, and that there was not at the commencement of the suit and is not now a substantial controversy between the parties of sufficient value to be within the jurisdiction of the court."

The plaintiffs excepted, and the case is before this Court on writ of error as to the jurisdictional question only under

act of March 3, 1891. (26 Stat. at L., 826, sec. 5; McLish *vs.* Roff, 141 U. S., 661; 35 L. ed., 893; Schunk *vs.* Moline, &c., Co., 147 U. S., 500; 37 L. ed., 255.)

POINTS.

I.

The court erred in entertaining the motion to dismiss.

By pleading to the merits and going to trial the defendant waived his right to object to the jurisdiction. Such objection can only be made on a plea to the jurisdiction.

Wood *vs.* Mann, 1 Sumn., 578.
Smith *vs.* Kernochen, 7 How., 198, 216.
Varner *vs.* West, 1 Woods, 493.
Evans *vs.* Davenport, 4 McLean, 574.
D'Wolf *vs.* Rabaud, 1 Pet., 476, 498.
Fife *vs.* Bohlen, 22 Fed. Rep., 878.
Cuthbert *vs.* Galloway, 35 Fed. Rep., 466.
Davis *vs.* Lathrop, 13 Fed. Rep., 565.
Evans *vs.* Gee, 11 Pet., 80, 83.

This rule has not been altered by the act of 1875 (18 Stat. at L., 472, sec. 5; Suppl., p. 83), giving the court power to dismiss suits not within its jurisdiction, as defined by law. (Act of August 13, 1888, 25 Stat. at L., 433; Suppl., p. 611, amending act of March 3, 1887, 24 Stat. at L., 552.)

Imperial Refining Co. *vs.* Wyman, 38 Fed. Rep., 577.

While a party cannot confer jurisdiction upon a court, he may estop himself from asserting facts affecting jurisdiction.

"Consent of parties cannot give the courts of the United States jurisdiction, but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission."

Mr. Chief Justice Waite in Pittsburgh, C. & St. L. R'y Co. *vs.* Ramsey, 22 Wall., 322; 22 L. ed., 823.

The allegation of a value in excess of $2,000 was admitted by the failure of the defendant to deny it.

This is in accordance with the general rules of pleading (Deputron *vs.* Young, 134 U. S., 241; 33 L. ed., 923, 928) and is the law in Tennessee.

West Tenn. Agric., &c., Ass'n *vs.* Madison, 9 Lea (Tenn.), 407, 409.

Vincent *vs.* Vincent, 1 Heisk. (Tenn.), 333, 335.

Boyd *vs.* Martin, 9 Heisk. (Tenn.), 382.

Caruther's History of a Law Suit (Tenn., 2d ed.), p. 191, sec. 100.

"Whatever is not denied in pleading is virtually admitted."

Cook *vs.* Taylor, 2 Tenn., 49, 52.

"All allegations in the declaration not denied in the plea shall be taken as true for all purposes of that issue."

Tennessee Code (M. & V.), sec. 3620.

"The Supreme Court shall not dismiss any suit for matters of form or for want of jurisdiction over the subject-matter in the court in which the action was instituted, unless exception was properly taken by demurrer to the want of jurisdiction in the court below."

Tennessee Code (M. & V.), sec. 3585.

Being the same as the common law upon this point, the Tennessee practice will control.

Deputron *vs.* Young, 134 U. S., 241; 33 L. ed., 923, 928.

This is not a mere technical point; it is essential to secure fairness and prevent surprise.

Being admitted, the jurisdictional facts are binding upon both parties. Their truth can be inquired into only by the court in protecting its jurisdiction.

The act of 1875 (18 Stat. at L., 472) greatly extended the jurisdiction of the court with reference to suits by assignees. In order to guard against pretended assignments section 5 was inserted, providing that in case it appeared "to the satisfaction" of the court that the suit did not really and substantially involve questions within its jurisdiction the suit should be dismissed.

Williams *vs.* Nottawa, 104 U. S., 209; 26 L. ed., 719;
Hartog *vs.* Memory, 116 U. S., 588; 29 L. ed., 725,

where the Court, speaking by Mr. Chief Justice Waite, said:

"It was well settled before the act of 1875 that when the citizenship necessary for the jurisdiction of the courts of the United States appeared on the face of the record evidence to contradict the record was not admissible except under a plea in abatement in the nature of a plea to the jurisdiction, and that a plea to the merits was a waiver of such a plea to the jurisdiction (Farmington *vs.* Pillsbury; *ante*, 114, and cases there cited). In its general scope this rule has not been altered by the act of 1875, but before that act was passed it had been held that the rule prevented the courts from taking notice of colorable assignments or transfers to create cases for the jurisdiction of the courts of the

United States in the absence of a plea in abatement or to the jurisdiction, and as that act 'opened wide the door for frauds upon the jurisdiction of the court by collusive transfers so as to make colorable parties and create cases cognizable by the courts of the United States,' we held in Williams *vs.* Nottawa, 104 U. S., 209, 211 (Bk, 26, L. ed., 719, 720), that the statute changed the rule so far as to allow the court at any time, without plea and without motion, to stop all further proceedings and dismiss the suit the moment a fraud on its jurisdiction was discovered."

This provision is not one for the benefit of negligent parties, but is to be restricted in its application to suits fraudulently or collusively brought or removed.

Davis *vs.* Lathrop, 13 Fed. Rep., 565.

It was, however, liable, if misconstrued, to work great injustice. The claim was made that a defendant could, as here, plead to the merits, by implication admitting the jurisdictional facts, and on the trial surprise the plaintiff with an issue that he had no reason to expect or be prepared to meet.

The leading case of Hartog *vs.* Memory, 115 U. S., 588; 29 L. ed., 725, has determined the practice and put a construction on the act which at the same time protects the court from frauds upon its jurisdiction and the plaintiff from unfair surprise. It holds that there may be a dismissal:

1st, where the court, having reason to suspect a fraud upon its jurisdiction, has inquired and found that such was the fact; and,

2d, when a lack of jurisdiction appeared from facts properly admitted on the issues made by the pleadings.

In Hartog *vs.* Memory this Court held that a dismissal by the circuit court was erroneous, no fraud on the jurisdiction being found, and the evidence showing lack of jurisdiction being inadmissible under the issues in the case.

Waiving, for the purpose of comparison only, our contention that no lack of jurisdictional value was shown in the case at bar, a striking similarity exists between it and Hartog *vs.* Memory.

In neither case was any fraud or collusion shown or found to exist. In both cases the evidence showing the alleged lack of jurisdiction had no bearing on the issues. In neither would a careful preparation for the trial prepare the plaintiff to meet it. In Hartog *vs.* Memory the Court say:

"Neither party has the right, however, without pleading at the proper time and in the proper way, to introduce evidence the only purpose of which is to make out a case for dismissal. The parties cannot call on the court to go behind the averments of citizenship in the record except by a plea to the jurisdiction or some other appropriate form of proceeding. The case is not to be tried by the parties as if there was a plea to the jurisdiction when no such plea has been filed. The evidence must be directed to the issues, and it is only when facts material to the issues show there is no jurisdiction that the court can dismiss the case upon the motion of either party.

"If in the course of a trial it appears by evidence which is admissible under the pleadings and pertinent to the issues joined that the suit does not really and substantially involve a dispute of which the court has cognizance, or that the parties have been improperly or collusively made or joined for the purpose of creating a cognizable case, the court may stop all further proceedings and dismiss the suit.

"In Williams *vs.* Nottawa the record showed that one of the issues to be tried was whether Williams, the plaintiff, was the real holder and owner of the bonds sued on, and the evidence showing the collusion, for which we ordered the suit to be dismissed, was all material and pertinent to that issue; and in Farmington *vs.* Pillsbury (*supra*) one of the defenses was that Pillsbury, the plaintiff, was not the *bona fide* holder of the coupons in suit, but that they were placed in his hands for the purpose of being sued on in the courts of the United States. The case came here on special findings applicable to that issue, and what we then said was in answer to the question certified on those findings.

"Beyond this, no doubt, if, from any source, the court is led to suspect that its jurisdiction has been imposed upon by the collusion of the parties or in any other way, it may at once of its own motion cause the necessary inquiry to be made, either by having the proper issue joined and tried or by some other appropriate form of proceeding, and act as justice may require for its own protection against fraud or imposition.

"But the evidence on which the circuit court acts in dismissing the suit must be pertinent either to the issue made by the parties or to the inquiry instituted by the court, and must appear of record if either party desires to invoke the exercise of the appellate jurisdiction of this Court for the review of the order of dismissal. (Barry *vs.* Edmunds, just decided, *post*, 729.)

The case of Morris *vs.* Gilmer, 129 U. S., 315; 32 L. ed., 691, is clearly distinguishable from Hartog *vs.* Memory and from the case at bar. In that case the jurisdictional point was raised not at the trial, but at a time before. The plaintiff expected it and had every opportunity to prepare to meet it.

II.

The court erred in considering only the value of the land described in the plea and excluding the rest of the land.

All of the land described in the declaration was included in the "matter in dispute." The plea of not in possession did not dispose of the question as to the land included in it. It raised an issue as truly as did the pleas as to the remainder of the land.

The plaintiff alleged possession; the defendant denied it; the plaintiff thereupon filed his similiter.

This presented an issue which was evidently passed upon by the jury, for their verdict covered all the land described in the declaration (Transcript, pp. 4 and 5), although by the law of Tennessee a verdict and judgment for a part only may be rendered. (Tenn. Code, M. & V., sec. 3970.)

"If the defendant disclaims as to all or part of the land sued for, the burden is on the plaintiff to show the defendant's possession or claim of ownership."

Caruther's History of a Lawsuit (Tenn., 2d ed.), p. 198, sec. 107.

The remark of Mr. Justice Brewer in a case where it was sought to show that a claim upon which, as here, judgment was entered was colorable only is appropriate:

"That its claim was not merely specious is shown by the fact that after a contest it did recover a judgment for the full amount that it claimed."

Schunk *vs.* Moline, Milburn & Stoddart Co., 147 U. S., 500; 37 L. ed., 255.

A defendant cannot avoid an issue by disclaiming.

Isham *vs.* Miller, 44 N. J. Eq., 61.
Glassington *vs.* Thwaites, 2 Russ., 458.
Ellsworth *vs.* Curtis, 10 Paige Ch. (N. Y.), 105.

It is true that a disclaimer may estop the defendant, but the plaintiff is entitled to a judgment upon which an execution can be issued. A writ of possession cannot be issued on an estoppel. The injustice of depriving a plaintiff of his judgment is as obvious as that of allowing a defendant to defeat jurisdiction by refusing to contest part of the claim.

The right to judgment in Tennessee is a substantial one, and judgment in ejectment is there conclusive as to title so far as the parties are concerned.

Tenn. Code (M. & V.), sec. 3983.

That the action of ejectment in Tennessee is intended to be used as a means of definitely and directly settling title appears from the fact of its extension by statute, so that a judgment can be had not only against a defendant in possession, but against any one claiming an interest in the land. This makes the right of the plaintiff to judgment the more evident.

Tenn. Code (M. &. V.), sec. 3955.
Also Langford *vs.* Love, 3 Sneed (Tenn.), 308.
Smith *vs.* Lee, 1 Cold. (Tenn.), 549.

The fact that defendant does not contest part of a valid claim does not reduce the amount in dispute; otherwise

there could never be a judgment by default and the defendant could defeat jurisdiction in any case.

Foster's Federal Practice (2d ed.), sec. 16, p. 35; sec. 293, p. 537.

Fuller *vs.* Met. Life Ins. Co., 37 Fed. Rep., 167.

Riggs *vs.* Clark, 71 Fed. Rep., 560; 18 C. C. A., 242.

Even if a legal defense appears upon the face of the declaration, the jurisdiction will not be affected.

Schunk *vs.* Moline, Milburn & Stoddart Co., 147 U. S., 500; 37 L. ed., 255.

III.

The court erred in holding that the land described in the plea was not worth more than $2,000.

The only evidence was that of the witness Muller and the affidavits of said Muller, I. B. Brock, and Charles Seymour.

These affidavits were properly admitted and considered by the court.

Foster's Federal Prac., sec. 481, p. 1029.

Elgin *vs.* Marshall, 106 U. S., 578.

Carr *vs.* Fife, 156 U. S., 494; 39 L. ed., 508.

Hartog *vs.* Memory, 116 U. S., 588; 29 L. ed., 725.

Wilson *vs.* Blair, 119 U. S., 387; 30 L. ed., 441.

Street *vs.* Ferry, 119 U. S., 385; 30 L. ed., 439.

Davie *vs.* Heyward, 33 Fed. Rep., 93.

Rector *vs.* Lipscomb, 141 U. S., 557; 35 L. ed., 857.

Morris *vs.* Gilmer, 129 U. S., 315; 32 L. ed., 690.

U. S. *vs.* Union, 4 Cr., 216.

Williams *vs.* Kincaid, 4 Dall., 20.

Course *vs.* Stead, 4 Dall., 22.

This testimony was—

1st. That of Muller on cross-examination, which was "that the market value of the land was fifty cents per acre; that it was wild or mountain land and not worth more than that unless its prospective value was to be considered, and that the land described in the plea of the defendant Rymer was not worth $1,000." (Transcript, p. 8.)

2d. That of Muller in affidavit (Transcript, p. 9), explaining his testimony in court and stating that, while he values mountain land as a whole at fifty cents an acre, this land "forms part of a connected body of land of about 25,000 acres and forms a gateway and outlet to this body for timber and stock to the Hiwassee river and railroad, without which the rest of the body would be materially reduced in value, say from ten to twenty cents per acre. To cut this off and permanently block this approach would reduce the value of the whole from two to four thousand dollars."

3d. The testimony of Charles Seymour (Transcript, p. 8) that the lands set out in the plea "lie on Lost creek and Little Lost creek and form a connecting way to many thousands of acres of land of the plaintiffs which lie in that vicinity, and that the lands described in this plea are worth more than $2,000 on account of their location and are not to be judged by the general price for mountain land in the vicinity; that these lands lie near the foot of the Frog mountain on the northwesterly side, where the timber is more than usually heavy and unusually valuable, both for accessibility and quality."

4th. The affidavit of I. B. Brock (Transcript, p. 9) that the land is worth much more than ordinary mountain land, "as they are part of a large boundary that would be needed for shelter for cattle off the mountain and for roadways and control of the ways to the herding grounds or timber-work, or, if mining be done, would be in the way."

REASONS.

First. The opinion of the trial court is not supported by the facts of record.

In dismissing a case the discretion of the court is legal, not personal. Sufficient facts to justify the action must appear of record; otherwise this Court will reverse the judgment.

Foster's Federal Practice (2d ed.), sec. 293, p. 535;
Barry *vs.* Edmunds, 116 U. S., 550; 29 L. ed., 729;

where the Court, by Mr. Justice Matthews, said:

"In making such an order, therefore, the circuit court exercises a legal and not a personal discretion, which must be exerted in view of the facts sufficiently proven and controlled by fixed rules of law. It might happen that the judge, on the trial or hearing of a cause, would receive impressions amounting to a moral certainty that it does not really and substantially involve a dispute or controversy within the jurisdiction of the court; but upon such a personal conviction, however strong, he would not be at liberty to act, unless the facts on which the persuasion is based, when made distinctly to appear on the record, create a legal certainty of the conclusion based on them. Nothing less than this is meant by the statute when it provides that the failure of its jurisdiction, on this account, 'shall appear to the satisfaction of said circuit court.'"

The above case is approved in—

Deputron *vs.* Young, 134 U. S., 241, 252; 33 L. ed., 923, 929.

When the jurisdictional allegations have been made and impliedly admitted, the burden of disproving jurisdiction is on the one attacking it.

If the allegations show jurisdiction, all presumptions are in its favor. "No court is to be ousted of its jurisdiction by implication."

Sullivan *vs.* Vail, 42 Conn., 90, 93 (per Foster, J.).

"It is undoubtedly true that until it is in some way shown by the records that the sum demanded is not the matter in dispute that sum will govern in all questions of jurisdiction."

Hilton *vs.* Dickinson, 108 U. S., 174; 27 L. ed., 688, 691.

Bowman *vs.* C. & N. W. R'y Co., 115 U. S., 611; 29 L. ed., 502.

In order to justify a court in dismissing a case it must be "legally certain" that the value or the damages, as the case may be, do not come within the jurisdictional limit.

This is the adjudicated meaning of the term "to the satisfaction of the said circuit court" used in the act of 1875.

Ch. 137, sec. 5, 18 Stat. at L., 472.

Barry *vs.* Edmunds, 116 U. S., 550; 29 L. ed., 729.

Wherever damages are not liquidated by the law it cannot be said that it is legally certain that they will not exceed a certain sum, and, no fraud or bad faith being shown

and it not appearing that the claim is colorable only, the claim of the plaintiff will control.

Foster's Federal Practice, sec. 16, p. 33.
Wilson *vs.* Daniel, 3 Dall., 401, 407.
Barry *vs.* Edmunds, 116 U. S., 550; 29 L. ed., 729.
Smith *vs.* Greenhow, 109 U. S., 669; 27 L. ed., 1080

Value of timber range and mining land is in its nature uncertain, and the claim of the plaintiff should have great weight.

There is nothing in the record to show that the court did not regard the land as worth $1,999, and that the alleged overvaluation was not made in good faith.

There was abundant evidence of a value above the jurisdictional amount to justify the court in denying the motion.

Second. The evidence showed that the value was sufficient.

Market price is only one element in value.

1 Sedgwick on Damages (8th ed.), sec. 243.
Harvey *vs.* Grant, 52 N. H., 569, 581.

It is not even an essential one.

Sparrow *vs.* Strong, 3 Wall., 97.

Value in use is to be considered as well as selling value.

1 Sedgwick on Damages (8th ed.), sec. 251.
Denver, S. P. & P. R. R. Co. *vs.* Frame, 6 Colo., 382, 385.
Fairfax *vs.* R. R. Co., 73 N. Y., 167.
Montana R. R. Co. *vs.* Warren, 6 Mont., 275, 284.

The value of property to the owner is to be considered.

Bradley *vs.* Gamelle, 7 Minn., 331.

Drake *vs.* Auerbach, 37 Minn., 505.

This is always done in eminent-domain cases under statutes allowing "just compensation" for property taken. "Just compensation" is nothing more than the law aims at in all actions, and these cases are fair precedents to the case at bar.

In such cases, where a part of a tract is taken, its value is that in connection with the rest of the land.

Lewis on Eminent Domain, secs. 464, 471.

Mills on Eminent Domain (2d ed.), secs. 462, 475, *et seq.*

Somerville & Easton R. R. Co. *vs.* Dougherty, 22 N. J. L., 495, 503.

Indiana B. & W. R'y Co. *vs.* Alling, 100 Ind., 409.

Virginia & Tucker R. R. Co. *vs.* Henry, 8 Nev., 165.

Dearborn *vs.* Boston, Concord & Montreal R. R. Co., 24 N. H., 79.

Petition Mount Washington Road Co., 35 N. H., 134.

Albany & Susquehanna R. R. Co. *vs.* Dayton, 8 Abb. Pr., N. S. (N. Y.), 182.

B. & O. R. R. *vs.* P., W. & B. R. R. Co., 17 W. Va., 812, 858.

Central Br. U. P. R'y Co. *vs.* Andrews, 26 Kans., 702.

Miss. Riv. Bd. Co. *vs.* Ring, 58 Mo., 491, 496.

Cummings *vs.* Williamsport, 84 Pa. St., 472.

In injunction cases the injury to the owner is the criterion.

Herbert *vs.* Rainey, 54 Fed. Rep., 248, 251.

Clapp *vs.* Spokane, 53 Fed. Rep., 516.

W. U. Tel. Co. *vs.* Charleston, 56 Fed. Rep., 419.

Third. But the normal market value of this land was sufficient.

The error consisted in seeking to determine its value by comparing it with land differently situated; in other words, by considering it by itself and disregarding its connection with other lands.

Land, unlike commodities, gets its value principally from its location. All its value must come from one or both of two sources:

1st. From what it yields of itself and by itself in the way of crops, minerals, etc., or as affording a desirable place of residence; and

2d. Its usefulness in connection with other land.

The latter element is by far the more important. The land in the heart of a great city owes to it almost all of its high value.

The land in controversy has great value because it furnishes the access to lands beyond.

If the 25,000 acres constituted the site of a commercial city it would be some six miles square, and if the land described in the plea constituted all of the land fronting on harbor, would the value of that acreage be the same as average land?

In case of a city lot worth a dollar per square foot and an adverse claimant with shanty in its corner claiming the whole, in suit could the occupant disclaim all of the square except a corner, his occupation of which would spoil the whole lot, and claim that this corner at average price per foot was below the jurisdiction of the court?

All the elements, not only of value, but even of market price, are here. *Market price* is defined:

"The market value of land is not necessarily, as sometimes seems to be supposed, the price which it would bring in forced sale by public auction. It is estimated upon fair consideration of the location of the land, the extent and condition of its improvements, its quantity and productive qualities, and the uses to which it may reasonably be applied, taken in connection with the general selling price of lands. The price which, upon full consideration of the matters stated, the judgment of well-informed and reasonable men will approve may be regarded as the market value."

Pittsburgh, V. & Charleston R'y Co. *vs.* Vance, 115 Pa. St., 325, 331 (per Clark, J.).

It has also been defined as what property "would bring at a fair public sale when one party wanted to sell and the other to buy."

Lawrence *vs.* Boston, 119 Mass., 126; which case held also that the tribunal might consider what the parties would give.

See also—

Memphis *vs.* Bolton, 9 Heisk. (Tenn.), 508;

Woodfolk *vs.* N. & C. R. R. Co., 2 Swan (Tenn.), 437;

L. R. J. R'y *vs.* Woodruff, 49 Ark., 381, 390;

where McSplain, J., defines market price as "the highest price which those having the ability and the occasion to buy are willing to give." This case further lays down the principle that it is the price to be obtained, not at auction, but at private sale, with sufficient time for inquiry.

In Somerville & Easton R. R. Co. *vs.* Dougherty, 22 N. J. L., 495, 503, where the true question was said to be, "What was their true intrinsic value in the hands of a man who could select the time and fix the conditions of his sales?"

Also:

"In estimating the market value of the land everything which gives it intrinsic value is a proper element for consideration."

Shenango & A. R'y Co. *vs.* Braham, 79 Pa. St., 447, 453 (per Paxton, J.).

In determining value not only the present use of the land but its capabilities are to be considered. The value of land depends on the use to which it is adapted and is reasonably apt to be put.

Boom Co. *vs.* Patterson, 98 U. S., 403; 25 L. ed., 206.

Ellington *vs.* Bennett, 59 Ga., 286.

Haslan *vs.* Galena, &c., R'y, 64 Ill., 353.

Miss. R. Br. Co. *vs.* Ring, 58 Mo., 491.

King *vs.* Minneapolis Union R'y Co., 32 Minn., 224.

Pittsburgh V. & Charleston R'y Co. *vs.* Vance, 115 Pa. St., 325, 331.

L. R. J. R'y *vs.* Woodruff, 49 Ark., 381, 490.

It is obvious that the evidence of a value less than $2,000 had no bearing on land situated as this was.

The general price of "mountain land" is as indefinite as would be the general price of "city land." It would depend entirely on its location.

Muller's testimony on the stand, even taken by itself, was merely to the effect that for its present use, considered

merely as a lot of land, it was worth less than one thousand dollars. Considered in connection with his affidavit, it merely meant that here was a boundary of mountain land worth, at the usual rate for mountain land, an amount less than that required for jurisdiction. As a matter of fact, that land was, so far as it appeared, never sold. No piece like it in location existed.

Fourth. The value of the real object of the suit determines jurisdiction.

Thus in a suit to quiet title the value of the land determines jurisdiction. Land with an uncertain title, open to attack at any minute, has no real value.

Lehigh Zinc & Iron Co. *vs.* New Jersey Zinc & Iron Co., 43 Fed. Rep., 545;

where Mr. Justice Bradley said:

"The value of the matters involved in the controversy is to be found in the value of the property, the possession or enjoyment of which will be imperiled by the threatening acts of the defendant is the measure of the value of the matter put in controversy by it. If any other test than this should be substituted, very many suitors would be debarred from seeking the protection of the Federal courts. * * *

"What would become of suits for the reformation of a written agreement, for the cancellation of alleged forged or fraudulent deeds, for the specific performance of contracts to convey lands, and many others of like character if upon questions of jurisdictional value of the matters in controversy the courts were limited to the pecuniary value of the deed, the contract, the agreement as such, and were barred from considering the value of the thing affected by or the subject-matter of these various writings?"

Thus in a suit nominally for rent, but the result of which will be to settle title to land, the value of the land is to be considered.

Stinson *vs.* Dousman, 20 How., 461; 15 L. ed., 966.
American Fertilizer Co. *vs.* Bd. Agric., etc., 43 Fed. Rep., 609; 11 L. R. A., 179.

The object of this action is to recover an entire block of land, valuable principally in its entirety.

The defendant cannot take the heart of the land without its true value as a part of the whole being considered.

There was error in the judgment of the court below.

Respectfully submitted.

CHARLES SEYMOUR,
Counsel for the Plaintiffs in Error.